



Tidelands Issues – Harbor Charges

April 5, 2012 Workshop



City Council Chambers
City of Newport Beach

What We'll Cover

- ▶ Reminder – City's Obligation
- ▶ Quick Committee Background
- ▶ Where we were last time
- ▶ New proposals/concepts today
- ▶ Some Misconceptions – Myths and Facts
- ▶ Open Discussion
- ▶ Next Steps



City's Obligation

- ▶ Charge Fair Market Value for use of the tidelands - two reasons. First reason:
 - ▶ These are the State's lands.
 - ▶ The State Lands Commission grants them to us:
 - ▶ Via legislation, set forth a trust agreement with the State of California (via Chapter 74 of the Statutes of 1978).
 - ▶ Newport Harbor's tidelands are subject to the *Public Trust Doctrine*.
 - ▶ If the City does not manage these lands appropriately and fairly, the tidelands grant can be revoked.



Testimony before SLC – 9/17/2001

society. And that in California it's one that's also rooted in and supported by both federal and State constitutional provisions.

So it's something more than a mere common law doctrine that can be altered as well by courts or the Legislature. The second thing is that the Commission really channels -- is channeled in administering the trust by the legislation, which provide guidance to it, and which the legislature has the power to adopt as the ultimate arbiter of the public trust.



City's Obligation

- ▶ Charge Fair Market Value to all Tidelands Operations – second reason:
- ▶ Not doing so can be a *Gift of Public Funds*, specifically prohibited by the California Constitution (Article XVI, Section 6):

“The Legislature shall have no power to ...to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.”



Testimony before SLC – 9/17/2001

The gift clause is another constitutional provision which has been invoked in a number of cases here and elsewhere, say that basically the State cannot make a gift of a valuable asset of this sort by making a grant, which is irrevocable and beyond its control.



How the Harbor Charges Committee Works

Committee on Harbor Charges

Examines charges relating to:

- Onshore Moorings
- Offshore Moorings
- Balboa Yacht Basin
- Commercial Piers
- Rentals of Residential Piers*
- Residential Piers*
- Other

* Not current configuration of committee

Public Workshops

Discusses concepts with stakeholders, including:

- Moorings (Fall 2010)
- BYB (December 2010)
 - Apartments
 - Garages
 - Slips
- Commercial Permit Holders (now)
- Residential (TBD)
- Other (TBD)

City Council

Reviews/Adopts

- TIMP
- Funding Plan
- Governance Model
- Harbor Charge changes by:
 - Resolution
 - Lease Approvals



Revisions to Last Proposal

Original Lease Terms – Commercial Marinas

- ▶ Term: 5 years - 30 years – (lease term linked to slip/pier useable life)
- ▶ Option to Renew: One or more renewals OK (total must be less than 50 years) with Option Fee
- ▶ Rent: 20% of Gross of Slip Rental Revenue
- ▶ Base Rent:
 - ▶ Greater of \$1.20/SF or 75% of 20% of Percentage Rent, whichever greater.
 - ▶ Updated every five years.
- ▶ Participation Rent – a portion of proceeds from sale or refinance paid to the City.
- ▶ Capital Improvement Set-Aside: Lessees must deposit with City 4% of gross in Capital Improvement Account for their specific marina.



Revised Lease Terms – Commercial Marinas

- ▶ **Term: 5 years - 30 years – (lease term linked to slip/pier useable life)**
 - ▶ No Change
 - ▶ **Option to Renew: One or more renewals OK (total must be less than 50 years) with Option Fee**
 - ▶ Option Fee Deleted. Just cover City's cost to renew.
 - ▶ **Rent: 20% of Gross from slip rental revenue**
 - ▶ City will update 2006 appraisal (for all use classes)
 - ▶ Committee will recommend charges for each use class in light of updated appraisal.
 - ▶ Where increases are substantial, phase in over three (3) years.
 - ▶ Revenue data from marinas will be protected from public disclosure (to full legal extent).
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Revised Lease Terms

▶ Base Rent:

▶ No change.

- ▶ Greater of \$1.20/SF or 75% of 20% of Gross of Slip Revenue, whichever greater.
- ▶ Updated every five years.

▶ Participation Rent – upon sale or refinance

▶ Delete.

▶ Capital Improvement Set-Aside: Lessees must deposit with City 4% of gross in Capital Improvement Account for their specific marina.

- ▶ Revised: No set-aside. However, marinas will be required to maintain facilities to specified standards. City may impose penalties if not done so.





Some Misconceptions

Some Misconceptions

- ▶ **Everyone will be charged 20% of gross.**
 - ▶ No – 20% was suggested rate for slip revenue from Commercial Marinas.
 - ▶ Overall approach will tailor charges to each user class – others might be:
 - ▶ Tour boats
 - ▶ Boatyards
 - ▶ Gas docks
 - ▶ Restaurant guest slips
 - ▶ Not-for-profits
 - ▶ Others TBD



Some Misconceptions

- ▶ The current 20% proposal isn't based on anything.
 - ▶ It is based on several things.
 - ▶ Current Leases in the Harbor:
 - ▶ Leases:
 - ❑ American Legion (40% of gross) – uplands joined to tidelands
 - ❑ Antibes Marina Lease (30% of gross) - tidelands
 - ❑ Balboa Bay Club (31% of gross) – uplands joined to tidelands
 - ❑ Harbor Tower Marina (25% of gross) – uplands joined to tidelands
 - ❑ Newport Marina (20% of gross) – County tidelands (recent ownership change)
 - ❑ Bayshores Marina (20% of gross) – County tidelands
 - ▶ Appraisals:
 - ❑ Jim Netzer (Oct 2006 DOV) – public record, in City's possession
 - ❑ 27% of gross where uplands joined to tidelands
 - ❑ 22% of gross for tidelands only



Other Appraisals

▶ Economic Model Appraisals:

- ▶ George Jones - *draft* Lido Marina Village appraisal (Dec 2010 DOV) – *assumed a long-term lease*:
 - ▶ If parcels joined = 25% of gross
 - ▶ Tidelands only = 15-18% of gross, recommended at 16%
 - ▶ Min annual rent = 75% of average of prior years' lease rentals
- ▶ George Jones – Harborwide Appraisal (June 2001 DOV) – *assumed 1-year permits*:
 - ▶ \$0.53/SF.
 - ▶ Suggests 5% premium above that for long-term lease.



Some Misconceptions

- ▶ **Of the TIMP Projects, will Harbor Users pay 100%?**
 - ▶ Importantly, this is about the City's obligation to charge Fair Market Value
 - ▶ But the answer is no – Harbor Users are expected to pay Fair Market Value – not more, not less.

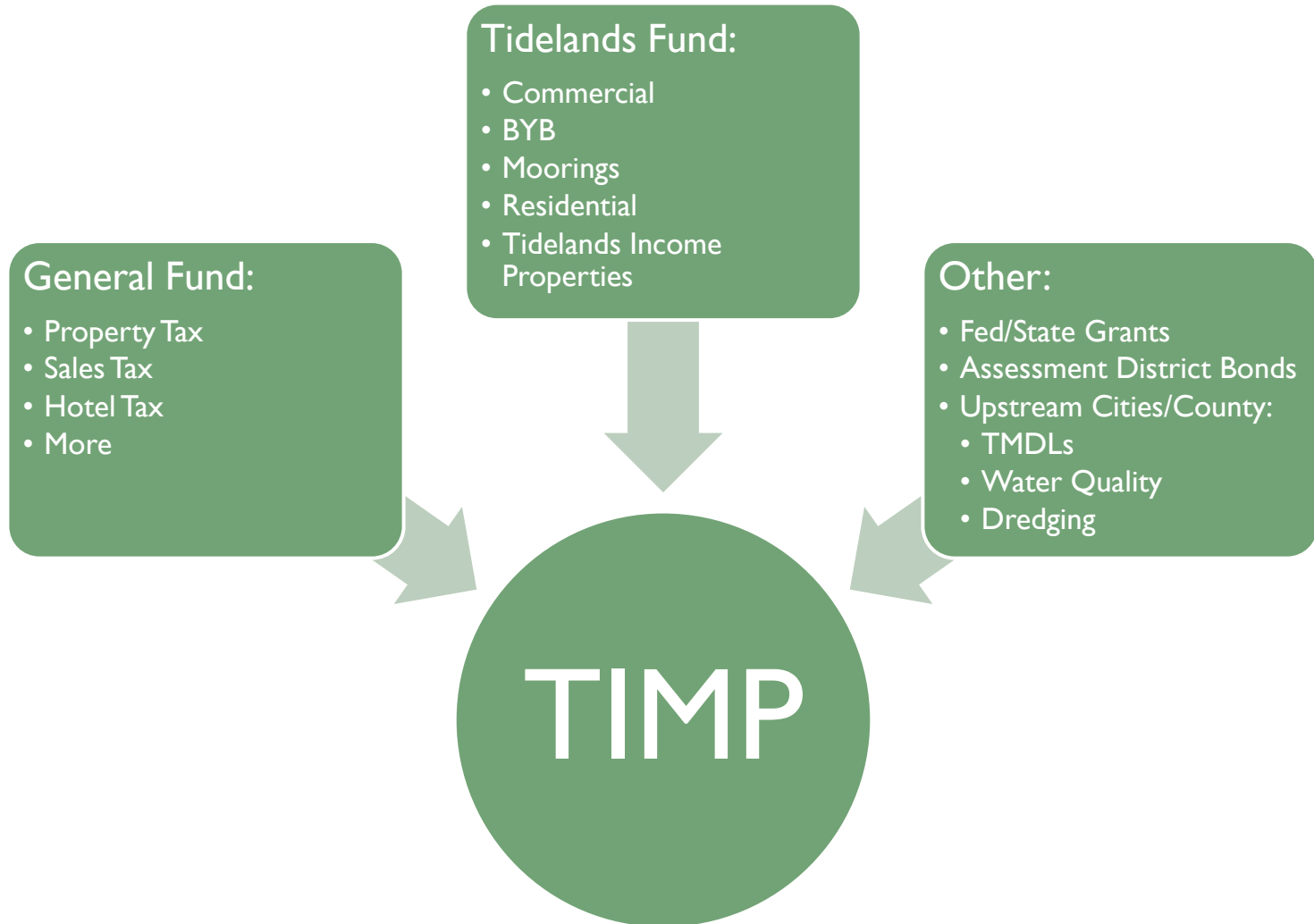


About the TIMP

- ▶ TIMP ID's at least \$100+ million of projects, including:
 - ▶ \$20 million for a long range plan to dredge and maintain the harbor at near design depth.
 - ▶ Multiple other harbor projects.
- ▶ City has already agreed to front ~\$7M for Harbor
- ▶ Entire community benefits from the waterfront via:
 - ▶ Higher property taxes
 - ▶ Sales taxes (restaurants, harbor purchases)
 - ▶ Existing income properties (Bay Club, pier concessions, Beacon Bay, more)
- ▶ Protecting/preserving the Harbor is the entire community's obligation.



More about the TIMP



Some Misconceptions

- ▶ Why aren't others (Fed, County, upstream cities) involved?
 - ▶ They are.
 - ▶ US taxpayers
 - ▶ \$36M for Upper Bay Dredging (including \$18M from Stimulus)
 - Was an “earmark”
 - ▶ About \$4M for LNB Dredging (Administration budget – 2+ years)
 - ▶ State of California taxpayers
 - ▶ About \$12M for Upper Bay Dredging (Prop 12 Bond Act)
 - ▶ \$2-4M citywide for Water Quality over last 10 years (Prop 12, 40, 80)
 - ▶ County taxpayers
 - ▶ Likely to fund dredging of LNB's County tidelands –\$1-1.5 million
 - ▶ Support of TMDLs last 10 years – \$10+ millions
 - ▶ Other upstream cities' taxpayers
 - ▶ Support of TMDLs last 10 years - \$2-6 million



Some Misconceptions

- ▶ If we don't set charges at FMV, the State won't do anything to Newport Harbor.
 - ▶ Maybe not – but:
 - ▶ In 2011, State audit highly criticizes SLC's stewardship of state lands –
 - *Lax land oversight cost California millions. An audit finds officials have failed to keep leases current for the use of public property...*
(LA Times, August 24, 2011)
 - ▶ During 2011, Legislature amended the CA Public Resources Code to allow SLC to charge for recreational piers (SB 152, Pavley, 2011)
 - ▶ Effective Feb 1, 2012, State moved to close down all Redevelopment Agencies – in a bid to reduce State's budget deficit.



Myths and Facts

- ▶ *The Newport Beach City Council is about to enact the largest tax hike / fee assessment on docks ... in order to raise an additional \$130,000,000.00 for the City's Tidelands Fund.*
- ▶ It's not a tax. It's the Fair Market Valuation of rented public (State) property. If you don't want to rent it, you don't have to pay it.
- ▶ The harbor users will only pay FMV – not cover the TIMP costs.
- ▶ Our estimates are about \$2M/year, not \$130M over an undefined period



Myths and Facts

- ▶ *The Council has ... increased mooring owners fees by an astronomical rate and they now propose to increase the per square foot "tax" on commercial marinas 10 fold, or take 20% of the the (sic) marina's gross operating revenue.*
 - ▶ Mooring fees increased over 5 years to 14% of an average of slip rates.
 - ▶ This is the same methodology recommended by the OC Grand Jury.
 - ▶ Proposed base SF increase for commercial marinas from \$0.36/SF to \$1.20/SF – not tenfold.



Myths and Facts

- ▶ *The direct impact of this new "tax" on marinas will be an increase of 30% - 50% in slip fee rental rates through out the Newport Harbor.*
 - ▶ Slip rates at Bayshores and Newport Marina (paying 20% of gross) remain competitive to rates at other marinas.
- ▶ *(Residential Piers) If fees similar to those proposed to be levied against commercial marinas come into effect, waterfront homeowners could be paying \$1.20 per SF.*
 - ▶ No one has proposed this.



Feedback/Open Discussion

Next Steps

- ▶ **Feedback from this Workshop**
 - ▶ Review/modify recommendations if appropriate
- ▶ **Netzer will update the 2006 Appraisal**
 - ▶ Categorize, update data, more
 - ▶ Review/modify recommendations if appropriate
- ▶ **Formal adoption by Council**
 - ▶ Rental schedule
 - ▶ Lease concepts/final lease agreements
- ▶ **Implementation**
 - ▶ July 1, 2012 and onward



For More Information

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